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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,522	11/13/2001	Gerald Lebizay	42390P12364	4266

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EXAMINER

HARRELL, ROBERT B

ART UNIT PAPER NUMBER

2142

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/002,522

Applicant(s)

LEBIZAY ET AL.

Examiner

Robert B. Harrell

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 87-89, 91-100 and 102-106 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 87-89, 91-100 and 102-106 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>see attached Office Action</u> .       |

Art Unit: 2142

1. Claims 87-89, 91-100, and 102-106 are presented for examination.
2. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks <sup>TM</sup>, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims (i.e., provide proper antecedent basis for “the” and “said” within each claim). Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.
3. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology (i.e., access to IFW through Public PAIR (as found on <http://portal.uspto.gov/external/portal/pair>)), this Office action will usually refer an applicant’s attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature *as the whole of the reference is cited* and relied upon in this action as part of the substantial evidence of record. Also, no temporal order was claimed for the acts and/or functions.
4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

***A person shall be entitled to a patent unless -***

***(b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.***

5. **Claims 87-89, 91-100, and 102-106 are rejected under 35 U.S.C. 102 (b)** as being anticipated by Duault et al (United States Patent: 5,930,265).

6. The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this office action:

***a) a patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.***

Art Unit: 2142

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103, examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligations under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. 102 (f) or (g) prior art under 35 U.S.C. 103.

8. **Claims 87-89, 91-100, and 102-106 are rejected under 35 U.S.C. 103 (a)** as being obvious over Duault et al (United States Patent: 5,930,265).

9. The applicant argued the above rejections under 35 U.S.C. 102(b) and 35 U.S.C. 103(a) by stating in substance that Duault is directed to efficiently transporting multimedia packets over an ATM network. Figure 4 shows the ATM Adaptation Layer (AAL) and the ATM layer. In the upper portion of Figure 4, an SSCS PDU payload and SSCS trailer are generated (details of which are described in conjunction with Figure 5). The SSCS trailer is appended to the SSCS PDU payload to define the CPCS PDU payload (col. 6, line 33-35; Figure 4). The CPCS PDU payload is not transmitted over the ATM network as a single packet, but is split into conventional ATM cells before being transmitted over the ATM network (Abstract; col. 7, lines 52-61; Figure 4). **Moreover, Duault discloses that each ATM cell shall contain one or several AAL SDUS or portions of these.** The last ATM cell shall include the SSCS trailer followed by padding bits if required (col. 7, line 66 to col. 8, line 2) (emphasis added). It is noted that the SSCS trailer (that contains the CIDs) may be in a different ATM cell than the ATM cells) containing portions (or all) of the SSCS payload. Thus, Duault expressly teaches away from transmitting the SSCS trailer and SSCS payload (i.e., the CPCS PDU payload) in a single multi-channel packet. In contrast, the Applicant expressly claims combining the first section and the second section into a packet segment, appending a network header to the packet segment to create a multi-channel packet, and transmitting the multi-channel packet over a network. It is further noted that Duault does not suggest modifying the ATM cells sent over the ATM network. An object of Duault is to transport fixed or variable length data packets using conventional ATM cells (col. 3, lines 30-35). This allows Duault's method to be used with currently available ATM network hardware (col. 3, lines 46-49, col. 8, lines 5-8). Thus, Duault fails to disclose or suggest at least one of the expressly recited limitations of claim 87. Accordingly, claim 87 is not anticipated nor rendered obvious by Duault. Independent claims 100 and 104 distinguish over Duault for at least the same reasons as claim 87. Claims 88- 89, 91-99, 102-103, and 105-106 are dependent claims and distinguish for at least the same reasons as their independent base claim in addition to adding further limitations of their own. Therefore, the Applicant respectfully requests that the instant 102 and 103 rejections be withdrawn. **However,** while the bulk of Duault's teaching is that of ATM which implemented fixed length cells, he did not exclude other types of networks (e.g., see col. 1 (lines 17-36)), which required to envelope ATM cells over ISDN TCP/IP packets or TCP/IP Internet packets as suggested by col. 1 (lines 37-44)). Also, as argued, **Duault discloses that each ATM cell shall contain one or several AAL SDUS or portions of these** as further enumerated in figure 13 and col. 10 (lines 56-64)). Again, ATM over TCP/IP (as suggested by col. 1 (line 37-44)) either anticipated the argued

Art Unit: 2142

limitation or it would have been obvious to encapsulate ATM cells into a TCP/IP packet when conversion was required between an ATM network to/from a TCP/IP network (i.e., gateway) as suggestive by col. 6 (lines 1-16) with respect to the argued figure 4 (i.e., "concatenate" equates to "aggregate" while "encapsulation" equates to a single packet be it for a non-ATM network). Furthermore, the claims fail to recite that the whole of the packet is physically transmitted at the same time, as one packet, as suggestive by argument which is not supported by the specification which too serializes the data bits into parts specifically claim 97 (as an example) which recites ATM like Duault. Since Duault clearly taught "concatenation" of the ATM cells into a single encapsulated packet, with payload in one section and channel identifiers in another with respect to figure 4 and enumerated in figure 13, the rejection under 35 U.S.C. 102 and 35 U.S.C 103 are deemed proper and stand.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

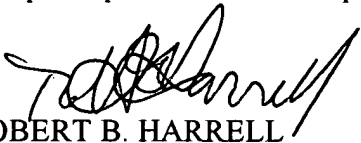
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the data of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew T. Caldwell, can be reached on (571) 272-3868. The fax phone number for all papers is (703) 872-9306.

14. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.



ROBERT B. HARRELL  
PRIMARY EXAMINER  
GROUP 2142